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BOX DAC
PATENT
2761-0139P

Handwritten: DAE #1652 6/4/02

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Ranjan BHADRA et al. Conf.: Unknown
Appl. No.: 09/676,502 Group: 1651
Filed: October 2, 2000 Examiner: LILLING
For: A HERBAL COMPOSITION FOR TREATING ASTHMA

PETITION UNDER 37 C.F.R. § 1.181
TO WITHDRAW THE HOLDING OF ABANDONMENT

BOX DAC

Assistant Commissioner for Patents
Washington, DC 20231

April 10, 2002

Sir:

In response to the Notice of Abandonment dated April 30, 2002, applicant hereby respectfully petitions under the provisions of 37 C.F.R. § 1.181 and MPEP § 711.03(c) for a decision to withdraw the holding of abandonment due to failure to receive an Office Action.

The Notice of Abandonment dated April 30, 2002 indicates that this application was abandoned in view of the applicant's failure to respond to an Office Action mailed on September 18, 2001. However, this Office Action was never received by the offices of the undersigned, and a search of the file jacket for the present application and the firm docketing records reveals that the Office Action of September 18, 2001 was never received. The offices of the undersigned did not become aware of the Office Action until advised of the holding of abandonment.

The fact that the Office Action of September 18, 2001 was never received in the offices of Birch, Stewart, Kolasch & Birch, LLP is evidenced by Exhibits I, and II attached hereto.

Exhibit I is a copy of the front page of the file jacket of Appl. No. 09/676,502 (which corresponds to Attorney Docket No. 2761-0139P). It is the policy in our office to record all information regarding Office Actions and responses on the front page of the file jacket. As the Petitions Examiner will note, there is no entry for the Office Action dated September 18, 2001, on the front page of the file jacket of the above-referenced application.

Exhibit II is a copy of the computer-generated daily docket sheet of Birch, Stewart, Kolasch & Birch, LLP for the date of December 18, 2001 (the due date for said Office Action), containing entries made by our Docketing Department of due dates in response to PTO actions. It is the policy of our offices to docket all due dates for Office Actions received from the USPTO into our computer docketing system.

Although Application Numbers, Titles, Client Names, and Inventor Names have been redacted from this Exhibit to avoid public disclosure of these matters once the present application is patented, it is still clear that there is no entry for the due date of December 18, 2001, which corresponds to the current application, Attorney Docket No. 2761-0139P.

The undersigned certifies that he has reviewed the computer-generated daily docket sheets for the due date of December 18, 2001, and did not locate an entry which corresponds to Appl. No. 09/676,502 to inventors Ranjan BAHDRA, Bikash Chandra PAL, Drishna DAS, and Samir BHATTACHARAYA.

In view of the above-described facts, it is respectfully submitted that the abandonment of the present application was unavoidable and due solely to problems with mailing of an Office Action, since the Office Action dated September 18, 2001, was never received in the offices of Birch, Stewart, Kolasch and Birch. The present Petition is timely filed for this purpose.

Since the above-mentioned Office Action was never received in the offices of the undersigned, it is believed that no petition fee is necessary in connection with this Petition. In the event that a petition fee is deemed necessary by the USPTO, it is respectfully requested that the fee of \$130.00 as set forth in 37 C.F.R. § 1.17(h)(1) be charged to Deposit Account No. 02-2448.

The USPTO is also requested to re-mail a copy of the September 18, 2001, Office Action to the undersigned and restart the period for response, since the offices of the undersigned still do not have a copy of the Office Action.

Appl. No. 09/676,502

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

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GMM/las
2761-0139P

Attachments

(Rev. 11/09/01)